

# General Terms of Trade at Korff AG

## Niedermattstrasse 35, CH-4538 Oberbipp

### 1. Scope of the General Terms of Trade

- 1.1 These General Terms of Trade, hereinafter ("**GTT**"), shall apply to all unilateral declarations of the Supplier and any arrangements between the Supplier and the Buyer. The scope of application of these GTT shall include all future trade relations in the version existing at that time, even if they shall not be expressly agreed between the Supplier and the Buyer again.
- 1.2 Buyer's transaction conditions, which do not comply with these GTT, shall not apply even if they have not been explicitly rejected by the Supplier.
- 1.3 These GTT shall also apply to the sales agreements concluded otherwise, e.g. by phone, fax or post. In the confirmation of order acceptance, the Buyers will be informed of the Internet address, at which these GTT can be downloaded. If the Buyer does not accept the GTT, the Buyer may exercise the right to withdraw from the agreement.

### 2. Offer, Order, Discounts

- 2.1 The offers of the Supplier, in which the period of validity has not been indicated, are not valid and not binding. The Buyer shall be bound by its own order. The Supplier is entitled to refuse to carry out the order within 14 days. If within this period the Buyer does not receive information about rejection to carry out the order, the order shall be deemed accepted.
- 2.2. If during the provision of the service the Supplier is dependent on the provision of Sub-Supplier's service, the Supplier shall be entitled to withdraw from the agreement, if the delivery of the Sub-Supplier is not effected for reasons, for which the Supplier is not liable. This shall not entitle the Buyer to file any claims for damages. The Supplier shall inform the Buyer immediately about the unavailability of the goods and shall return any payments made by the Buyer (prepayment and other).
- 2.3. The Supplier shall have the right to withdraw from the agreement if the Buyer provides false information about its ability to pay, withdraws payment or if an application has been filed to open the bankruptcy proceedings concerning Buyer's assets, unless the Buyer makes a prepayment.
- 2.4 Conditions of promotions and discounts shall apply only if agreed in writing.

### 3. Reservation of a Right to Change

- 3.1 The Supplier expressly reserves the right to deviate from the quality, colour, width, weight or additional equipment of goods, as generally accepted in the trade, if these changes do not cause for the Buyer limitation in goods suitability for the agreed purpose.

- 3.2. Models and samples shall be considered typical models, which are an approximate demonstration of materials in terms of quality, size and colour. They do not provide any grounds for the Buyer to make claims for non-compliance of the delivered goods with these models. The Supplier expressly reserves the right to make ordinary deviations, as accepted in trade, or slight deviations of the nature referred to in the previous paragraph. It is considered that they have been accepted by the Buyer.
- 3.3. The Buyer may file quality-related claims for ordered goods only in the legitimate amounts or amounts adopted in the trade of goods with regard to a similar price category.

#### **4. Civil Liability and Warranty**

- 4.1 The Supplier warrants that the products are free from defects in manufacture and in material; statutory warranty period for defects shall apply for the products.
- 4.2 The Buyer is obliged to check the delivered goods as soon as possible, and notify the Supplier in writing of any defects, at the latest within 14 days from the receipt of goods. Payment for the goods shall not be considered resignation from the right to file claims.
- 4.3 In case of a defect, the Buyer has the choice to request a free repair of the goods, replacement by goods of the same type and the same quantity, or to receive a credit note for a corresponding calculated amount of the lower value of the defective merchandise. All other guarantees are excluded. The customer must allow the supplier a reasonable period to fulfil this guarantee obligation. Any claim for damages against Korff AG, in particular due to the impossibility of performance, for direct or indirect damages, consequential damages due to defects and damages to third parties, are excluded insofar as this is permissible under applicable law.
- 4.4. The Buyer allows the Supplier to carry out the obligation regarding the same defect three times. If despite this, carrying out of the obligation again fails to bring the required result, the Buyer is entitled – at its own option – to require price reduction or to withdraw from the agreement. These contractual provisions and the provisions applicable to delivery shall also apply to items that have been delivered as replacement items, free from defects, when carrying out the obligation again.
- 4.5. The Supplier may refuse to repair or deliver defect-free item, if the Buyer failed to pay the purchase price in at least that part, which corresponds to the value of the delivered item, taking into consideration the importance of the detected defect.
- 4.6. Solely the direct Buyer shall be entitled to file statutory warranty claims against the Supplier, such claims are not assignable.

#### **5. Transfer of Risk**

- 5.1. The risk shall pass on the Buyer, when the goods are handed over to the carrier or leave Supplier's warehouse in order to be shipped.

## **6. Payment**

- 6.1 Net price for the goods shall be paid within 30 days. Different arrangements, such as discounts, should be specified on a corresponding invoice.
- 6.2. In the case of late payment, the Supplier shall send up to two reminders. For the second reminder, a fee shall be charged of CHF 20.--. If the Customer still fails to make the payment, appropriate legal action will be taken, in order to recover the amount due. In addition, in the case of late payment, late payment interest shall be charged at 6%. The Supplier reserves the right to file claims for damages.
- 6.3. If, despite setting an appropriate payment date, the Customer defers payment arising from the earlier agreement between the Parties, for more than fourteen days, irrespective of any further rights enjoyed by the Supplier, all invoices still unpaid at this time, that arise from the same legal relationship, shall become due and payable immediately, with simultaneous cancellation of the additional payment date.
- 6.4. The Customer does not have the right to mutually offset the claims regardless of their legal basis, unless these claims have been recognized, are undisputed or have been legally approved. Further, in respect of these claims, the Customer may not refer to the right of detention.

## **7. Delivery**

- 7.1 Delay of delivery or delay of service provision – may be caused by Force Majeure and other events, impossible to predict and occurring not by fault of the Supplier, which include, in particular, strike, lockout, official order etc., also if they occur on the part of the Supplier's Sub-Suppliers. The delays entitle the Supplier – also in the case of time limits and dates agreed in a binding way – to extend the time of delivery or service provision by the time of obstacle duration, plus an appropriate preparatory time. The Supplier shall inform the Customer about the delays in delivery and delays in service provision and about the expected duration of the delay.
- 7.2. If the obstacle lasts longer than 3 months and it is impossible to predict, when the period of delay in delivery or delay in service provision shall come to an end, both the Supplier and the Customer shall be entitled to withdraw from the agreement in respect of not yet performed part of the agreement. The Customer may not file claims for damages or claims arising from withdrawal from the agreement, or from delay of delivery or delay in service provision.
- 7.3. Partial deliveries shall be permitted, unless due to the way of using the goods, that has been clearly defined and is consistent with the agreement, it cannot be expected from the Customer to accept partial deliveries. Separate invoices shall be issued for partial deliveries, which must be paid in accordance with paragraph 6.

## **8. Limitation of Liability**

- 8.1 The Supplier shall be liable to the Customer only for breach of contractual obligations in an intentional or grossly negligent way, which will result in bodily injury or health deterioration, and further, shall be liable for infringement of material contractual obligations due to a slight negligence. Material contractual obligations shall be understood as the obligations, whose fulfilment is a precondition that enables proper implementation of the agreement, and whose fulfilment may be expected by a Party to the agreement in normal circumstances. However, in such cases, the liability is limited only to damages foreseeable and typical for the agreement. The Seller shall not be liable in the case of a slight negligence, when performing non-material contractual obligations.

## **9. Third-Party Protective Rights [Copyright] and Technical Information**

- 9.1. If the Supplier carries out the delivery in accordance with the drawings or other information given by the Customer, and if for this reason third-party protective rights [copyright] are infringed, the Customer shall indemnify the Supplier against any infringement-related claims.
- 9.2. Technical information, tender documents, calculations, sketches and drawings of the Supplier are only non-binding proposals, for which the Supplier assumes no liability, provided that, by way of exception, no written promises to grant statutory warranty or warranty have been given.
- 9.3. You can find the information on how we handle your personal data on our data protection declaration. You find the current version on our website at [www.korff.ch](http://www.korff.ch).

## **10. Reservation of Ownership**

- 10.1. The delivered goods remain the property of the Supplier until fulfilment of all claims due to the Supplier from the Customer that arise from the commercial relationship.
- 10.2. Until satisfying all claims that are due to the Supplier from the Customer under any legal basis, now or in the future, the Supplier will be provided the security, which it shall release at the request, at its own choice, if its value, in the long term perspective, exceeds the value of claims by more than 20%.
- 10.3. The goods remain the property of the Supplier; the processing or transforming of the goods is always in favour of the Supplier as the Manufacturer, however, without imposing any obligation on the Supplier. If as a result of merger, Supplier's (co-)ownership right shall expire, right now it is agreed that Customer's (co-)ownership right to an item passes to the Supplier in proportion to the value of the item (the value given on the invoice). The Customer retains the Supplier's right to (co-) ownership free of charge. The goods, to which the Supplier has the (co-) ownership right, shall be hereinafter referred to as the reserved goods.
- 10.4. The Customer has the right to carry out the processing and disposal of the reserved goods under normal trade activity, provided there is no delay in payment. Pledge on or transfer of ownership with regard to the security is not allowed. Right now, the Customer assigns to the Supplier, for security purposes, all claims related to the reserved goods, arising from further sale or other legal basis (in particular insurance, tort), including all amounts of the balance that are due on the current accounts. The Supplier authorises the Customer, until cancellation, to recover assigned to Supplier debt on its account on its behalf. This authorization to carry out the debt recovery may be cancelled only when the Customer fails to fulfil any of its payment obligations.

- 10.5. In the case of third-party access to the reserved goods, in particular in the case of the seizure of the goods, the Customer is obliged to indicate the ownership rights of the Supplier and inform the Supplier without delay so that it can enforce its ownership rights. If the third party is not able to reimburse the Supplier the court or out-of-court costs arising therefrom, the liability for the costs shall be borne by the Customer.
- 10.6. In the event that Customer's behaviour is contrary to the agreement, in particular in the event of delay in payment, the Supplier shall have the right to withdraw from the agreement and accept the return of the reserved goods, or – in certain cases – to require assignment of Customer claims towards third parties for release of goods.

## **11. Governing Law and Competent Court**

- 11.1 With regard to all legal relationships arising from this contractual relationship, the parties agree to the application of the law of the Swiss Confederation to the exclusion of the provisions of international private law (IPR) and the uniform UN sales law (CISG).

## **12. Modification**

- 12.1 Korff AG reserves the right to change these terms and conditions at any time and without prior notice. You can find the latest (valid) version at [www.korff.ch](http://www.korff.ch).